

**Rainbow Garment Contracting, Inc. and Anti-Racist Garment Workers Union and Gustavo Espinosa.** Cases 21-CA-28185 and 21-CA-28196

August 29, 1994

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS STEPHENS  
AND DEVANEY

At issue is whether the judge gave the correct remedy for the discriminatory discharges.

On December 11, 1992, Administrative Law Judge Gerald A. Wacknov issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief to the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.<sup>1</sup>

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Rainbow Garment Contracting, Inc., Los Angeles, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a) and reletter the remaining paragraphs accordingly:

“(a) Offer employees Maria Amezcuita, James Devoe, Julio Guerrero, Luis Carlos Preciado, and Gustavo Espinosa immediate and full reinstatement to their former positions of employment or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as

<sup>1</sup> The Respondent, in its exceptions, raises certain issues as to its obligation to offer the discriminatees reinstatement and backpay. The General Counsel contends, inter alia, that these questions are being raised for the first time in the Respondent's exceptions and that they were not fully litigated at the unfair labor practice hearing. We agree with the General Counsel. Because the issues raised by the Respondent have not been fully litigated at this stage of the proceeding, we shall leave their resolution to the compliance stage of the proceeding.

However, we shall modify the judge's recommended Order to conform his reinstatement language to that traditionally used by the Board with the understanding that reinstatement will not be required for any discriminatee who is shown not to be legally entitled to be employed in the United States. We shall also add an expunction requirement. See *Sterling Sugars*, 261 NLRB 472 (1982). Finally, we shall substitute a new notice.

a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

“(b) Remove from its files any reference to the unlawful discharges and notify the employees in writing that this has been done and that the discharges will not be used against them in any way.”

2. Substitute the attached notice for that of the administrative law judge.

**APPENDIX**

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT engage in surveillance of employees' union activities by taking photographs of union representatives while they are outside the factory engaging in lawful union activity.

WE WILL NOT coercively discourage employees from supporting the Union by telling employees that the Company has threatened union representatives with a handgun and has punctured the tires of their vehicle.

WE WILL NOT discharge employees because of their union activity or suspected union activity on behalf of any labor organization.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of their rights guaranteed them by Section 7 of the Act.

WE WILL offer to employees Maria Amezcuita, James Devoe, Julio Guerrero, Luis Carlos Preciado, and Gustavo Espinosa immediate and full reinstatement to their former positions of employment or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest.

WE WILL remove from our files any reference to the unlawful discharges and notify the employees that this

has been done and that the discharges will not be used against them in any way.

RAINBOW GARMENT CONTRACTING,  
INC.

*Salvadore Sanders, Esq.*, for the General Counsel.

*Stephen A. Varga, Esq.*, of Santa Monica, California, for the Respondent.

*Jose O. Hernandez, Representative*, of Los Angeles, California, for the Union.

## DECISION

### STATEMENT OF THE CASE

GERALD A. WACKNOV, Administrative Law Judge. Pursuant to notice, a hearing in this matter was held before me in Los Angeles, California, on May 19 through 21, and August 18 and 19, 1992. The charge in Case 21-CA-28185 was filed by the Anti-Racist Garment Workers Union (the Union) on July 23, 1991, and a first amended charge was filed on September 4, 1991. The charge in Case 21-CA-28196 was filed by Gustavo Espinosa, an individual, on July 31, 1991. Thereafter, on September 6, 1991, the Regional Director for Region 21 of the National Labor Relations Board (the Board) issued a consolidated complaint and notice of hearing alleging violations by Rainbow Garment Contracting, Inc. (the Respondent) of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act). The Respondent's answer to the complaint denies the commission of any unfair labor practices.

The parties were afforded a full opportunity to be heard, to call, examine and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, briefs have been received from counsel for the General Counsel and counsel for the Respondent.

On the entire record,<sup>1</sup> and based on my observation of the witnesses and consideration of the briefs submitted, I make the following

### FINDINGS OF FACT

#### I. JURISDICTION

The Respondent is a California corporation engaged in the garment manufacturing business, and operates a facility in Los Angeles, California. In the course and conduct of its business operations, the Respondent annually purchases and receives goods and products valued in excess of \$50,000 directly from suppliers located outside the State of California.

It is admitted, and I find, that the Respondent is now, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

#### II. THE LABOR ORGANIZATION INVOLVED

The Respondent denies that the Union is a labor organization within the meaning of the Act. Jose Hernandez, a representative of the Union, testified that the Union attempts to

organize workers in Los Angeles County in order to bargain collectively with their employers for employee benefits. The Union has never been a party to any collective-bargaining agreements with employers, but has attempted to intercede on behalf of unorganized employees in order to resolve problems with their employers. It has filed representation petitions with the Board, and has been involved in three representation elections. It has a constitution and bylaws, and holds regular union meetings in which employees participate.

On the basis of the foregoing, I find that the above-named Union is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act. See *St. Anthony's Hospital*, 292 NLRB 1304, 1304-1306 (1989).

### III. THE ALLEGED UNFAIR LABOR PRACTICES

#### A. The Issues

The principal issues raised by the pleadings are whether the Respondent has violated Section 8(a)(1) of the Act by making physical and verbal threats against union organizers and representatives and whether it has violated Section 8(a)(3) of the Act by discharging five employees because of their activity on behalf of the Union.

#### B. The Facts

On about May 28, 1991,<sup>2</sup> three representatives of the Union handed out union literature to the Respondent's employees as they were taking their morning break outside the factory. This activity was observed by various supervisors, including one of the owners of the Respondent, Tam Chiu. The Respondent employs about 100 employees, approximately 95 percent of whom are Spanish speaking, and the Union distributed a handbill to the employees, in Spanish only, which states, *inter alia*:

#### WORKERS FROM RAINBOW INC. SAY

Enough already of abuses from foreman and bosses! Repression, abuse and discrimination are some of the problems that garment workers endure and those bad acts are agitated due to the despotic treatment from employers and their rogues.

Some of these problems like:

- 1—starvation salaries
- 2—no pay for overtime
- 3—dirty restroom, they constantly never clean them.
- 4—Lack of a lunchroom.
- 5—need of a healthful and safe environment in which to work.

These are only some wrongs that we endure here at Rainbow Inc. To that we add the despotism from managers and persons in charge against the workers. Especially against women, since sexual harassment from these louses is the order of the day.

. . . .

Is it perhaps fair that we the laborers be treated like this? Of course not.

. . . .

<sup>1</sup> The General Counsel's unopposed motion to correct transcript is granted.

<sup>2</sup> All dates or time periods herein are within 1991 unless otherwise specified.

Workers should unite and fight for international and multi-racial unity. Only like this can we stop despotism and humiliation by Employers. Laborers from Rainbow Inc., let's organize the Anti-Racist Garment Workers Labor Union.

. . . . .

we demand fair salaries  
clean restrooms  
lunchrooms for all the workers  
immediate firing of abusive managers

The handbill contained the name, address, and phone number of the Union, and one of the Respondent's employees, Yolanda Amezcuita, phoned Hernandez, the Union's representative, that evening. Amezcuita attended a regular monthly union meeting on May 31, and was given union membership cards to distribute to her coworkers. She signed a card on May 31. Amezcuita testified that thereafter she became actively involved in promoting the Union, and would frequently solicit a group of some 15 employees, with whom she ate lunch and took breaks outside the Respondent's facility, to sign union membership cards. She distributed approximately 10 such cards and, between July 12 and 18, she obtained signed cards from 3 employees, namely, James Devoe, Gustavo Espinosa, and Luis Preciado, which cards she returned to Hernandez.

On July 12, the union representatives again handbilled outside the Respondent's facility during the morning break. There were approximately 20 employees standing outside, and the majority of them took handbills from the representatives. Amezcuita testified that the Respondent's owner, Tam Chiu, got very close to the representatives and began taking pictures of them and, in English, cursed at them in a "very loud and angry" manner. Chiu held a device similar to a cattle prod which was able to stun people with an electrical charge. Several weeks earlier, when Amezcuita went to Chiu's office to make copies of a work-related paper, Chiu showed her the device, which he said he had recently purchased, and said that it could be used to defend one's self.

Amezcuita further testified that another supervisor, Cedric Su, was present during the aforementioned union handbilling, and after Amezcuita had returned to the plant about 3 or 4 minutes before the end of the break, she observed Su removing a pistol from a box in his office.

The handbill distributed to the employees on this occasion contained a facsimile of a membership card at the bottom, and urged the employees to fill it out and return it to the Union. It listed the benefits which the Union would demand, including a shorter workday, a higher minimum wage, complete health insurance, immediate and unconditional amnesty for all undocumented workers, and that May 1 be a paid holiday "because this is the International Day of the working class." The handbill states that:

The Anti-Racist Garment Union (SARCO) is being built by members of INCAR and the Communists of P.L.P. This Union is dedicated to organize all the workers starting with garment [sic] industry.

Hernandez testified that Chiu was as close as 1 foot away from the face of the various union representatives as he took their picture. Some tried to cover their faces with the union

newspaper which they were distributing to the employees. Chiu was yelling at the representatives, telling them to "[g]o to hell," and to "[g]et out of here." The employees were returning to work as the break period was about over. Hernandez testified that the situation seemed potentially volatile, as Chiu was provoking the representatives with his yelling and closeup picture taking, and the representatives decided to leave. At this point, Hernandez observed Chiu approaching Oscar Gomez, another representative. Chiu pushed a large caliber bullet in Gomez' chest, and then handed him the bullet, saying, "This bullet is for you." Chiu then said that he had more bullets, "But next time, I'm going to put it in your body."

The representatives went to their van, which was parked adjacent to the Respondent's parking lot near the factory. As they were approaching the van, Hernandez noticed that Supervisor Su, with a knife in his hand, was walking away from the van. As Hernandez entered the driver's side of the van he noticed that the sidewall of the left rear tire had been punctured. At the same time, Chiu bumped another representative, Jose Sanchez, with his body and arm, whereupon Sanchez entered the van and picked up a ceramic coffee cup and threw it at Chiu. The cup missed Chiu.

Chiu then yelled at Su to "[g]et the gun," and Su ran back into the factory. He returned within 30 seconds with a handgun, which he tried to conceal with his hand. Hernandez told Su to "cool it down," and the representatives got into the van. At this point, Su ran to the rear of the van and Hernandez heard air escaping from the right rear tire. Hernandez got out of the van, observed that the right rear tire was also flat, and decided to drive away with two flat tires rather than leave the vehicle at the Respondent's premises. They drove several blocks away and began to change one tire when they noticed that Chiu had followed them in his vehicle and was stopped in the middle of the street watching them. They changed the tire, and then drove the van with one flat tire to a friend's home. Chiu did not follow them.

The aforementioned incident occurred on a Friday. The following Monday, after conferring with an attorney, Hernandez filed a claim with the Los Angeles Police Department charging Su with threatening conduct and vandalism. The matter was set for hearing, but the charge was dropped after Hernandez was unable to attend the scheduled hearing due to another important commitment.

Oscar Gomez testified regarding the events of July 12, and corroborated Hernandez' account of the happenings during that situation. Gomez stated that Chiu appeared to be provoking a confrontation by taking pictures at close range, and verbal insults. At one point Chiu placed a bullet in Gomez' hand and said, "Next time you come back, I will put it in your body." At another point, as the representatives were in the process of leaving, Chiu pushed Sanchez, and this prompted Sanchez to throw a coffee cup at Chiu. Then, according to Gomez, Chiu told Su to get a gun, and at some point Su produced a gun and pointed it at the union representatives. Gomez admitted that he could not recall exactly what happened and does not know whether Su went back inside the factory to get a gun or whether he already had the gun in his possession. Gomez heard the air escaping from the rear tire of the van, and testified that the van had two punctured tires. Chiu followed them in his vehicle as they left the area.

Amezquita testified that shortly after the morning break had ended, Sergio Delapaz, foreman of the finishing department, said to her and employee James Devoe something to the effect that the union people were reluctant to fight, and mentioned that Su had a "nine millimeter" pistol in his hand. He said that the union representatives were fools for "coming here to clown around like this" in front of the factory; and that Su had punctured the tires of their vehicle while Chiu was present.

On July 16, during the noon lunch break, the union representatives returned to the factory and commenced handbilling. Accompanying the representatives were personnel from channel 52, a Spanish television station, and a local Spanish newspaper, *La Opinion*, who had been contacted by Union Representative Hernandez. Hernandez was using a megaphone and was telling the employees who were outside the plant that the union representatives were victims of attacks from company bosses, and that the bosses had punctured the tires of the Union's vehicle. He said this type of conduct would continue unless the employees had union representation. He also distributed a union leaflet, in Spanish, advising the employees of the "criminal attacks" against the union representatives, and urging the employees to join the Union in order to get increased wages and other benefits.

Both Amezquita and employee James Devoe consented to be interviewed by reporters from the newspaper and the television station. Employee Julio Guerrero was also interviewed by them, according to Amezquita, but Amezquita did not hear what Guerrero said until the news was broadcast that evening, *infra*. Amezquita told the reporters that the majority of the employees were Latinos, and their treatment was not as good as the treatment of "the bosses," and said that she favored the Union because it was the best way to obtain what the employees were demanding. During this interview, both Foreman Delapaz and Supervisor Clint Williams were nearby, listening to her, and she felt that Delapaz "was trying to intimidate to affect my answers." Devoe told the reporters, according to Amezquita, that the employees were very displeased because of the bad working conditions and the mistreatment of some of the people.

That afternoon, Amezquita was called into the office by her supervisor, Carol Arrigoni, who said that Chiu wanted to speak to her. Chiu asked Amezquita what was going on, and Amezquita said, in English, that:

[T]he people from the union had shown up. That they had again handed out fliers, and they were making claims that they had been attacked. That they had received criminal attacks by him—by his behalf. I also told him that the television people had been present. I also told him that the people from the newspaper, *La Opinion*, had been there. I told him that they were asking questions—people questions, and that they had asked me questions. And he ask me what it was that they ask me. I told him that they asked if there was discrimination at the job. I told him that us Latinos people had a place at work that was very different than that of the bosses. . . . I also told Mr. Chiu that I was asked if I was agreeing to form a union at the work place, and I said yes.

Chiu told Amezquita that this was not a valid Union because it was not registered. Amezquita asked Chiu why he was questioning her about what took place, and Chiu said that it was because Amezquita understood Spanish very well. Amezquita asked why he did not ask some of the Hispanic supervisors, who also spoke Spanish fluently, and Chiu did not answer. She gave Chiu a copy of the flier that the union representatives had distributed, and told him that if he wanted to know more he could watch the 6 o'clock news on channel 52.

That evening, during the 6 o'clock news on channel 52, a report on the Union's organizing of the Respondent was aired, together with the interviews of Amezquita, Devoe, and Guerrero. Guerrero said, according to Amezquita, who watched the broadcast, that people of the same race as the boss had better positions and were given the best work, and that this was affecting the Latinos.

Amezquita's primary work station was located in the basement of the Respondent's factory, although her work also required her to go to other parts of the plant. Julio Guerrero, James Devoe, Gustavo Espinosa, and Phillippe Villalba also worked in the basement. They were all under the immediate supervision of Carol Arrigoni, who worked in the basement with them. The employees would frequently talk with each other, about both work and nonwork-related matters and, according to Amezquita, they were never told that they could not talk to each other or that their talking was excessive. Amezquita noticed a "great difference" after the union rally on July 16. Prior to that time she had a good relationship with Arrigoni, who would talk with her about different things, such as a trip she had taken to New York. After July 16, however, Arrigoni was not as friendly, spoke with her only sparingly, and would scream orders at her. Amezquita also observed that during the occasions when her work took her to various parts of the building, there would always be a supervisor nearby "trying to listen to what I was talking about with other people." The supervisors who were observing her were, according to Amezquita, Supervisors Arrigoni, Delapaz, and Miguel Tirado.

Also, according to Amezquita, Guerrero's workplace was changed on July 18, when he was moved to the banding department on the first floor.

On Friday, July 19, when Amezquita arrived at work, Arrigoni said that she wanted to make some things clear to her. Arrigoni then said that she did not want Amezquita to leave the basement, or lift any heavy rolls of fabric. At the time, Amezquita was 3-1/2 months pregnant, but had had no difficulty doing her work in any respect, and had not complained to Arrigoni. Arrigoni told her that she didn't want Amezquita to climb the stairs, and that if she needed a sample to be taken somewhere in the plant, Arrigoni would take it for her. Amezquita remained in the basement that day. Also on that day, while Amezquita was waiting to use the restroom, which was occupied, she had occasion to speak to Preciado who was preparing some boxes for shipping. She observed Su passing by twice during a period of about 3 minutes, and noticed that he was watching them.

After work, at 5 p.m. on July 19, Amezquita was waiting on the sidewalk across the street from the plant, together with Julio Guerrero, James Devoe, and several other family members of Guerrero and Amezquita, as the group was meeting after work to go to a birthday celebration. While

waiting for Gustavo Espinosa to join them, she observed Chiu, Chiu's wife, and Su, standing at the "first floor" window watching them with binoculars for about 5 minutes.

Luis Preciado and Gustavo Espinosa are Amezquita's friends, and the three of them would eat lunch together, either in the small lunchroom or outside the plant.

Amezquita reported to work on Monday, July 22. Arrigoni summoned her to an office and handed her various items, including her radio and scissors, and told her to go and pick up her last paycheck. Amezquita asked why, and Arrigoni, who appeared very nervous and upset, screamed at her that she talked too much. While waiting for her check she encountered Devoe in the office. He too had been fired. They waited about 20 minutes for their checks, and Amezquita overheard Chiu tell the bookkeeper to hurry up and get the checks made out. Amezquita had never been told that she talked too much or would be discharged for talking too much, and had routinely talked to coworkers on the job. Talking among the employees was a regular occurrence, and Amezquita did not talk more than other employees.

James Devoe began working for the Respondent on June 10, and was discharged on July 22. He was hired by Arrigoni as a patternmaker. The job of patternmaker is a skilled position and Devoe's job was to discuss the dress design with the designer, and make the pattern for the garment; the pattern is then used to cut out the sample garment. Devoe had prior experience as a patternmaker, and has a degree in patternmaking from the Fashion Institute of Technology in New York.

On July 12, after the union representatives had appeared at the premises during the morning break, Supervisor Delapaz said to him and Amezquita, who were working in the basement, that someone had punctured the tires of the union representatives' vehicle, and had scared them away with a gun. Devoe did not recall whether Delapaz identified the person who had committed these acts. Later that day, Devoe signed a union membership card that was given to him by Amezquita.

Devoe testified that during the union rally outside the plant on July 16, he was interviewed by the television and newspaper reporters, and told them that the employees were trying to get the Union organized because they needed better benefits, cleaner dining rooms and bathrooms, and because they did not get paid overtime. Amezquita and Julio Guerrero were also interviewed. The interviews of the three employees were broadcast during the 6 o'clock news that evening.

Four employees, including Devoe, Amezquita, and Guerrero, worked in the basement. Arrigoni was their supervisor. Devoe testified that it was customary for employees to talk while they were working, and neither Arrigoni nor any other supervisor told them that they were talking too much.

According to Devoe, nothing was ever said to him by any supervisor that the quality of his work was unacceptable, or that his production was too low. When interviewed for the job he was required to make a pattern for Arrigoni; this took several hours. Arrigoni said she would let him know if he was the best applicant after interviewing other individuals who had applied for the job.

Devoe testified that prior to the union activity Arrigoni had been pleasant toward Devoe and spoke with him on a daily basis regarding work-related matters. However,

Arrigoni's demeanor changed after the interview on July 16. According to Devoe, Arrigoni doubled the amount of work he would be assigned, and always complained about minor things that she had never complained about before. This would happen about four times a day. She became less polite, and would throw work on his table rather than hand it to him as she had done previously. In addition, she was watching him and checking his work; she had not done this in the past.

Devoe reported to work on July 22, and noticed that Guerrero was leaving the plant. Guerrero told him that he had been fired because of the Union and his interview on TV. On entering the factory, Arrigoni told Devoe to report to the bookkeeper's office and pick up his final check because she could not "stay on my back watching me, correcting my work." Devoe asked whether he was being fired because of the TV interview, and Arrigoni said that was not true. Arrigoni never reprimanded him about his work or issued any written warnings about his work. Nor did she ever praise his work; according to Devoe, Arrigoni never praised anyone's work. Devoe went to the bookkeeper's office. Amezquita entered the office shortly thereafter, and said that she had also been terminated. While waiting for their checks, Devoe heard Chiu telling the bookkeeper to get the checks prepared "really fast."

The discharge notice prepared by Arrigoni stated that Devoe was unable to perform patternmaker and related duties, such as correctly filling out cost sheets and making accurate yardage estimates, and that: "Excessive and unnecessary talking as a result job performance is not of a quality standard." Devoe testified that Arrigoni would sometimes change the cost sheets he submitted for each garment, but that this simply reflected a difference in the excess yardage that each believed should be allotted for the garment. In this regard, Arrigoni had more experience than Devoe with the patterns of garments that the Respondent customarily produced, and this caused her to make different yardage estimates than Devoe. Thus Arrigoni, knowing how Devoe estimated excess yardage, would sometimes change Devoe's figures, but never told him to change his procedure for doing this work, and never advised him that his method for filling out the cost sheets or determining the excess yardage was wrong. Nor did Arrigoni ever tell Devoe that he was talking too much.

Gustavo Espinosa was employed by the Respondent since May 22, 1989. Since May 1990, he primarily worked in the warehouse, but also maintained a desk in the basement; some warehouse materials were also stored in the basement. His duties were to keep the warehouse in order, receive incoming materials, bring fabric to the cutters, and keep an inventory of merchandise in the warehouse. He was discharged on July 26. He signed a union membership card, given to him by Amezquita, on July 18. He and Amezquita would regularly eat lunch together in the lunchroom at the factory. Supervisors would sometimes be present in the lunchroom. Although Espinosa sometimes worked in the basement, the supervisor with whom he had the most contact was Clint Williams rather than Arrigoni. When Espinosa arrived at work on July 26, he was summoned to the office. Chiu and the bookkeeper, Peter, were present. Peter spoke to him in Spanish and thanked him and told him that it was the owner's decision to give him his final paycheck. Espinosa, who was taken by surprise, did not say anything. He had received no

prior warnings for his work performance, and was never told the reason for his termination.

Espinosa never told any supervisors that he favored the Union. About a week or so prior to his discharge he had a conversation with Supervisor Miguel Tirado who commented that he did not understand why things were happening at the factory. Although Espinosa understood him to be referring to the Union, no supervisors have ever specifically mentioned the Union to him. About 2 months prior to his discharge, Foreman Delapaz told him that Chiu said the Respondent would be able to pay him a little more money if he could speak English, as this would be an advantage. Espinosa replied that if he could speak English he wouldn't be working for the Respondent; rather, he would be looking for a job that paid him more money. This was not said in an offensive manner and was merely a statement of fact.

Luis Preciado began working for the Respondent on February 17, 1991. He worked in the packaging department as an inspector. His immediate supervisor was Miguel Tirado. He arrived late to work on about 10 occasions. Each time he arrived late his supervisor would tell him to try to get to work earlier. He was never warned that he would be discharged for arriving late to work.

On July 18, Preciado signed a union membership card which was given to him by Amezcuita. Preciado would, on occasion, speak with Amezcuita in the basement when he would inquire whether Espinosa was still working, as he and Espinosa, who sometimes worked in the basement, walked to and from work together. He and Espinosa took breaks together twice a day.

On July 18, Preciado happened to remove a gummed RPS (Roadway Parcel Service) label or sticker from a pipe and placed it on a box packed with garments. The sticker was in English and Preciado did not know what it said or represented. Nor was he able to explain why he did this; it was just a spontaneous act. He had not seen such a sticker before. Supervisor Su observed this, and gestured "no" with his head, and Preciado then saw Su reporting the incident to Delapaz. About a half-hour later, Delapaz approached him and asked why he put the sticker on the box. Preciado said that he had not done it intentionally, and Delapaz said that if he did it again he would be terminated because the work would "come out bad." Delapaz told him to remove the sticker, and Preciado did so. According to Preciado the box of pants on which he had placed the label, together with several other boxes, had been there for over a month; there were no other markings on the boxes and they were not being prepared for shipment.

On July 19, Preciado had a conversation with Amezcuita while she was waiting to use the restroom. They were speaking in Spanish, and Supervisor Su walked by on two or three occasions and observed them speaking. When Su walked by they stopped talking. Su, who does not speak Spanish, was about 15 feet away and, according to Preciado, would not have been able to hear their conversation.

On Friday and Saturday, July 19 and 20, nothing more was said to Preciado about the packaging label incident. The following Monday, July 22, at about 11 a.m., Supervisor Tirado summoned him to the office and told him that the owners had directed him to give Preciado his final check. Preciado asked for an explanation, and Tirado said that he

could not give him an explanation because he was not there when the incident involving the sticker had occurred.

In April, Preciado had made a mistake by mixing two different sizes of shorts together and at that time Tirado told Preciado that he should try not to make any more mistakes because if he did he would be fired. Preciado said that he would be more careful.

Sergio Delapaz, foreman of the finishing department, testified that he became aware that the June 16 television coverage of the Union's rally would be aired by channel 52 on the 6 and 11 o'clock news that evening. Delapaz testified that he watched the news and saw the interviews. He acknowledged that Amezcuita said, during the broadcast of her interview, that the owners and supervisors of the Respondent were discriminating against the workers; that Guerrero said that racial discrimination existed because the workers of the same race as the owner were given better positions and pay; and that Devoe said there were many problems in the workplace and many employees complained about these problems. According to Delapaz, Chiu asked him about the broadcast, and Delapaz reported to him what the three employees had said during their respective television interviews.

Delapaz testified that he was outside the factory, close to the door, during the Union's June 12 visit to the Respondent's premises, and that to his knowledge, no supervisor had a pistol or an electric shocking device. He observed that two ceramic cups were thrown at Chiu by one of the union organizers; the first cup missed Chiu's head and the second cup hit Chiu on the ankle. Delapaz acknowledged that Espinosa worked in the basement with Amezcuita, Devoe, and Guerrero, as there was fabric stored there.

Carol Arrigoni is supervisor of the design department. She has joint authority with Chiu to hire and fire employees. Arrigoni testified that she recommended to Chiu that Amezcuita, Devoe, and Guerrero be discharged because they constantly talked during work to the point where Arrigoni could not concentrate on her work. According to Arrigoni the talking started about the last part of June. Thereafter she warned the three of them at least once a week about their talking, but never told them that they would be discharged if they continued to engage in excessive talking. Because of the talking, she began checking their work more closely. Arrigoni had no idea that the three employees were active on behalf of or supported the Union.

With regard to Devoe, Arrigoni testified that since the time he was hired in May he was unable to do a cost sheet, and his pattern work was poorly done; she was constantly having to make corrections. While Devoe did "fairly well" during his first week of work, his attitude changed and became "bad" and Arrigoni could not get him to cooperate with her and do the work as she wanted it done. She recommended to Chiu that Devoe be discharged about 2 weeks after he was hired, but Chiu said, "Give him a chance." She complained many times thereafter, and Chiu told her "not to be so picky." She had to reject some of Devoe's patterns and warned him everyday. On July 16, she placed an ad in the newspaper for a replacement patternmaker for Devoe.

Arrigoni testified that Amezcuita was "fairly careful until all this talking started," but became careless and made mistakes. She asked Amezcuita, who was noticeably pregnant, not to run up and down the stairs and to get someone to lift the rolls of fabric for her, and always spoke to her in a

friendly manner. Arrigoni said that she did not call Amezcuita to the office the day after the television crew appeared at the factory; however, Chiu did tell her that he questioned Amezcuita about the matter.

Amezcuita's "Employment Separation Record," dated July 22, states:

Excessive and unnecessary talking, which has resulted in poor performance and quality of work has suffered. She has been told many times because of her pregnancy not to lift fabric rolls & not to deliver samples upstairs to sample sewers & insists on doing both.

Excessive talking has been disruptive to other employees, as a result attitude, work habits & initiative has dropped. Supplied fake Immigration Card. Has not advised office of change of name, recently married.

Arrigoni said that she heard that tires had been slashed during the June 12 union visit, and that she might have heard this from either Supervisor Williams or Foreman Delapaz.

Arrigoni testified that Chiu is not a very strict employer, and was reluctant to discharge employees for not properly performing their work. She had been complaining to Chiu about Guerrero for about a year, and told Chiu that Guerrero liked to hang around and kill time, and would not do what he was told to do. Chiu told her not to worry about it.

Pik Hong Chiu, owner of the Respondent, testified that because of his experiences in China he had a particular abhorrence of Communism, and was not aware that the purported Union was anything but a subterfuge for a Communist organization which would not hesitate to employ terrorist and deceptive measures in seeking inroads into his business through his employees. Thus, on reviewing one of the fliers distributed by the Union he went to the address reflected on the flier and took photos of Communist slogans and emblems, including clenched fists, a Communist flag, a "Molotov cocktail," and automatic weapons, posted on the windows of the office at that address. He did not know that the representatives were from a union, nor did he even know of the existence of the Union herein until after the instant charges were filed with the Board, when a Board agent advised him that the organization that had handbilled in front of his building was, in fact, a union. Nor was he aware that any of his employees were associated with the organization.

Chiu denied that he ever placed a bullet in the chest of Union Representative Gomez, or handed him a bullet, or knew anything about such an incident. When he began taking photos, the union representatives began yelling at him, using foul language, and one of them, apparently Gomez, threatened to kill Chiu. Chiu did not see Cedric Su on the sidewalk that day during the Union's visit. Chiu did not see a gun or a knife in anyone's hand, and denied that either he or Su punctured the tires of the Union's van. He testified that two coffee cups were thrown at him by Hernandez, one of the union representatives, and that the first cup missed him but the second cup hit the heel of his right foot. According to Chiu, when the union representatives drove away in the van it was "driving very well," and he did not observe any flat tires. After instructing someone to call the police, he followed the van in order to be able to let the police know its location, as he had a car phone and a high frequency transmitter in his vehicle, and was able to keep in contact with

his office. However, the police did not arrive until several hours later.

Chiu testified that Espinosa, who was in charge of inventorying fabric, marking it, and bringing it to the cutters in an accurate and timely fashion, was discharged because he was careless and kept making mistakes with expensive fabrics, and this resulted in a loss of money for the Respondent. Espinosa had a higher level of responsibility than other employees in the department and was considered to be a leadman. Chiu instructed Su to talk to Espinosa about his work performance, as Chiu does not speak or understand Spanish, and Espinosa does not understand English. Also, according to Chiu, it would have been helpful for Espinosa to learn English but he never tried to learn. "Later," according to Chiu, "he became less and less concentration [sic] on the work, always went down to the basement and talked to people there." Chiu testified that if Espinosa wanted to work "he could be very smart," but for some reason he became "lazy."

Preciado, according to Chiu, was discharged because he was absent and tardy on numerous occasions, and because he intentionally placed a sticker on a box that was ready to be shipped. The box was one of four boxes, packed that morning, on which "UP" labels had been placed. These labels designated that the boxes were to be shipped by air. Preciado placed an "RPS" sticker over one of the UP stickers. RPS is a carrier that only delivers by truck; thus, the customer, rather than receiving the merchandise by air the following day, would not receive the order for 5 or 6 days. When Preciado was asked why he did this he was never able to give a satisfactory answer. Apparently Chiu believed that someone had put him up to this, as Preciado was specifically asked whether this was the case. Chiu testified that "we knew that somebody tried to do something to the shipping department, we had to ship something—some clothes out but when they would receive it there was a whole bunch of garbage in the box." Preciado was supposed to know what the stickers meant. Chiu said that Preciado was given a chance to tell the truth about who caused him to mislabel the box, but Preciado would not say. In addition, the head of the shipping department was not very happy with Preciado's work, as he mixed up the sizes of clothing.

Guerrero was a former truckdriver, whom Chiu transferred to the shipping and cutting departments, as the Respondent's insurance company precluded Guerrero from driving because of a number of citations. He was paid more than the customary rate of pay for these positions, as Chiu permitted him to retain the higher driver's pay scale. According to Chiu, Guerrero made mistakes as a marker, even though he was placed in the basement near Arrigoni, who could oversee and correct his work. Moreover, he and the other employees in the basement, Amezcuita and Devoe, always talked in very loud voices in order to be heard, as they did not work in close proximity to each other. Also, they listened to Spanish music on the radio, and had the volume turned too loud. Arrigoni could not get them to talk less or to lower the volume of their voices or the radio, and felt that the employees were not properly concentrating on their work.

Chiu testified that Arrigoni reported to him that she repeatedly gave instructions to Amezcuita, but that Amezcuita would not follow orders. Amezcuita had the job of cutting samples by hand, and she made mistakes all the time in cut-

ting the fabric. Also, she talked all day long, and even went to other departments just to talk. Because she was pregnant, she was instructed to have someone carry the fabric to the cutting table for her, but she did not do so. Chiu denies that he spied on Amezcuita with binoculars when she was outside the premises. Further, for purposes of the hearing, Chiu took photos from outside the building to show that there were no windows on the ground floor on the side of the building where Amezcuita and her friends were standing. Rather, the windows were on the second floor. In addition, the place where Amezcuita and her friends were allegedly standing was some distance away from the building, and a parking lot fence would have obstructed the view of the second floor windows. Thus, Chiu maintains that Amezcuita could not have observed anyone standing in the second floor windows.

Chiu said that employees who work for Arrigoni seldom work for long periods of time, and that 15 people "were fired" in the past 4 years because Arrigoni's temper was "pretty bad"; so bad, in fact, that there has not been 1 week that Arrigoni has not yelled at Chiu.

Chiu testified that Devoe's patternmaking work "was worse than a beginner," and he was not able to properly perform the work after 2 months. However, Chiu testified that Devoe was the best applicant of seven individuals who were interviewed for the position, and that "the first month she [Arrigoni] liked him alot." At another point, Chiu said that after a "couple of weeks" Devoe had demonstrated that his work was not acceptable. The Respondent has a 3-month probationary period, and it was decided to terminate Devoe prior to its expiration. In addition, according to Chiu, Devoe "talked from the beginning of the work until the end of the work. If he had paid enough attention to his work he was able to do it." He was not good at preparing cost sheets, and would not listen to Arrigoni's instructions. Arrigoni warned him about this several times.

The Respondent introduced an exhibit into evidence showing that some 83 employees, not including the 5 alleged discriminatees herein, were laid off or discharged in 1991. The exhibit shows that all but seven of the employees on the list were "laid off," and that the other employees were discharged for cause. Chiu testified that the employees who were laid off were actually terminated, but were told they were laid off because the Respondent did not want to hurt their feelings.

As noted above, Chiu went to the address listed on the one of the union leaflets, and took photos of the office windows. He testified that he gave the photos to his supervisors, and they prepared a poster which was posted at the factory from the end of May through August. Chiu maintains that he did not know what the poster said since whoever prepared it wrote in Spanish, and he never asked his supervisors to tell him what they had written. The poster is about 3 feet long and 2 feet high, and contains eight photos of the front window of the union office, including some closeups of material posted in the window depicting Communist slogans and propaganda. One of the photos shows a picture of several men holding a gasoline bottle with a wick, or "Molotov cocktail," and an automatic weapon known as an AK-47. At the top of the poster, in letters several inches high, is written: "Fellow workers, Communists cannot be in this country legally." Below that, in smaller letters, is the quotation, "Think twice, don't commit the greatest error of your life."

A portion of the Union's handbill is also attached to the poster, and states that: "We demand just salaries, clean bathrooms, a lunchroom for all workers, immediate firing of abusive foremen," and, printed in pen beneath the aforementioned items, "a new microwave."

On cross-examination, Amezcuita and Espinosa admitted that they used false social security cards and false immigrant registration cards (green cards) to obtain employment with the Respondent; Preciado admitted that he used a false immigrant registration card; and Devoe admitted that some of the dates and periods of employment with prior employers on his employment application were incorrect as, in order to obtain employment, he wanted to make it appear that he had worked in the Los Angeles area for a longer time than was actually the case.<sup>3</sup> Guerrero did not testify in this proceeding.

The record also contains voluminous documents, each of approximately 150 pages, comprising the complete workers' compensation files of Amezcuita, Espinosa, and Preciado. These employees, shortly after their discharge, filed workers' compensation claims against the Respondent, alleging that they incurred both physical and emotional stress and disability on the job. They were apparently subjected to batteries of tests by physicians, psychologists, and other medical professionals, and the aforementioned reports were submitted to the Respondent for reimbursement of costs incurred by such professionals in evaluating the "disabilities" of the employees. The Respondent apparently introduced the aforementioned documents to show either that they contained fabricated claims regarding alleged on-the-job injuries or emotional distress, thus adversely reflecting on the employees' credibility with regard to the material issues herein; or, if such reports were true, that the employees were indeed deficient in their work because of work-related physical or emotional stress, thus lending credence to the Respondent's contention that the employees were discharged because, for physical or psychological reasons, they were unable to properly perform the work required of them.

### C. Analysis and Conclusions

I have previously found that the Union is a labor organization within the meaning of the Act. The Respondent's owner, Chiu, has admitted his intense suspicion of and repugnance toward the Union, particularly as a result of its affiliation with a Communist organization. Thus, Chiu believed that the Union was not a legitimate labor organization, but rather was a front for a subversive and even terrorist group. While Chiu's antipathy toward the Union is thus understandable, it has not been shown that the Union herein had any agenda other than the conventional objectives of labor organizations; therefore the employees' activity on behalf of such an organization is clearly protected by the Act.

I credit the testimony of Union Representatives Hernandez and Gomez, and find that during their visit to the factory on July 12, Chiu engaged in unlawful surveillance of employees' union activity by conspicuously photographing the union

<sup>3</sup> While exhibits introduced by the Respondent contain documents which appear to be written warnings issued to the aforementioned employees, such documents were received provisionally, subject to verification by subsequent record testimony. The Respondent failed to proffer such testimony, and I find that the record evidence does not show that, in fact, the warnings were issued to the employees.



organizers in the presence of the assembled employees. Such conduct clearly has an inhibiting effect on employees' willingness to accept union material from representatives, and to engage in other forms of union activity. See *Sunbelt Mfg.*, 308 NLRB 780 (1992); *Farm Fresh*, 305 NLRB 882 (1991); *Barnes Hospital*, 217 NLRB 725, 727-728 (1975). By such conduct the Respondent has violated Section 8(a)(1) of the Act as alleged.

I further find that Chiu, during the July 12 union visit, handed Gomez a bullet and told him that the next time he appeared at the plant the bullet would be in his body; and further, that Chiu instructed Supervisor Su to go into the plant and get a gun. I find that Su did as he was instructed, and produced the handgun in order to intimidate the union representatives and cause them to discontinue their organizing efforts. Further, I find that Su, who did not testify in this proceeding, did puncture the tires of Hernandez' van with a knife. While it is admitted that at least one ceramic cup was thrown at Chiu by one of the union representatives, I find that this was a defensive or spontaneous act undertaken as the union representatives were attempting to leave the scene, provoked by the Respondent's prior conduct, and does not excuse the Respondent's egregious behavior. Thereafter, employees of the Respondent were made aware of the incident both by Supervisor Delapaz, who advised Amezcuita and Devoe of the threats to the union representatives, and by Union Representative Hernandez' July 16 announcements to the employees, accompanied by a handbill, outlining the Respondent's behavior.<sup>4</sup>

I credit Devoe and Amezcuita and find that following the July 12 confrontation outside the Respondent's premises, Foreman Delapaz reported to them that Chiu and Su had intimidated the union representatives by displaying a handgun and by puncturing the tires of their vehicle. As the potential of physical injury or property damage to union representatives would certainly tend to deter employees from themselves engaging in union activity, and as such unlawful conduct is fairly encompassed within the complaint allegation that Delapaz "threatened employees with physical harm if they supported or assisted the Union," I find that by such conduct the Respondent has also violated Section 8(a)(1) of the Act.

The record evidence shows that the alleged excessive talking by Amezcuita, Devoe, and Guerrero coincided with the Union's attempts to organize the employees. Each of the aforementioned employees were interviewed by television channel 52, their interviews were aired on the local news the evening of July 16, and the Respondent's owner, Chiu, was

made aware that each of them, either explicitly or by clear implication, voiced a preference for the Union. Thereafter, according to the testimony of Amezcuita, whom I credit,<sup>5</sup> Guerrero's work station was moved from the basement to the first floor, and Amezcuita and Devoe, whom I also credit, were closely observed by various supervisors. Further, Amezcuita, who was only 3-1/2 months pregnant at the time, and who had not complained about the work which she was accustomed to performing, was relegated to the basement and was prohibited from performing her regular duties which required her to walk to other areas of the factory and interact with other employees. Finally, on July 22, within a week of their television interviews, the three employees were concurrently discharged.

A common thread running through the alleged rationale for their discharges is the Respondent's contention that they refused to curtail their excessive talking, even after constant warnings by Supervisor Arrigoni. It is highly unlikely that employees would simply ignore such alleged clear and repeated warnings by a high-level supervisor with the authority to discharge them for insubordination, and I find that, in fact, the employees talked no more than was customary, and received no such warnings. In addition, as noted above, Guerrero was separated from Amezcuita and Devoe, the employees' activities were kept under close scrutiny, and Amezcuita was not permitted to have any contact with other employees. Under these circumstances it is reasonable to presume that, following their expressions of solidarity with the Union's objectives, any talking amongst themselves or with other employees whatsoever was deemed to be unacceptable and was viewed by the Respondent as conspiratorial and supportive of the Union, and that the Respondent's "excessive talking" terminology is merely a euphemism for "union activity."

On the basis of the foregoing, given the admitted antipathy toward the Union by Chiu, his knowledge of the employees' stated preference for the Union, and the timing of and the unconvincing and discredited reasons presented in support of the Respondent's discharges of the employees, I conclude that Amezcuita, Devoe, and Guerrero were discharged because of their known support for and activities on behalf of the Union, and that such discharges were therefore violative of Section 8(a)(3) of the Act as alleged.

Preciado, a friend of Amezcuita, who would frequently have lunch with her, was also discharged on July 22. The incident which allegedly precipitated the discharge occurred on July 18, at which time Foreman Delapaz warned Preciado that he would be discharged if he again engaged in such con-

<sup>4</sup> While the foregoing incidents were fully litigated by the parties, the complaint does not specifically allege that such conduct is violative of the Act. The complaint does contain an allegation that Foreman Delapaz, on July 12, at the facility, threatened employees with physical harm if they supported or assisted the Union. As Delapaz' conduct in advising Amezcuita and Devoe of the Respondent's threats, set forth above, is reasonably encompassed by this complaint allegation. However, there is no evidence that Delapaz was directly involved in the foregoing incidents outside the Respondent's premises. Nor has there been a motion to amend the complaint to include allegations that either Chiu or Su violated the Act by the aforementioned conduct. Therefore, while clearly demonstrating extreme union animus, I make no determination herein that such conduct is violative of the Act.

<sup>5</sup> In assessing credibility I have carefully considered the Respondent's contentions that Amezcuita, Preciado, and Espinosa submitted false documents to the Respondent in order to obtain employment, and, having been unjustly discharged, may have exaggerated the extent of their job-related stress or injuries. In this latter regard, however, it is not unlikely that the authors of the various medical reports and psychological profiles did not, themselves, undertake to exaggerate such claims. I am also mindful of the fact that Devoe, in his employment application, falsely claimed that he had worked for various employers in the Los Angeles area for a longer length of time than was actually the case. Nevertheless, each of the aforementioned employees appeared to be credible and to have an accurate recollection of the events, and frankly responded with answers that were sometimes adverse to their interests. I was impressed with their apparent candor and forthrightness in describing the incidents herein.

duct, namely, the inadvertent placing of a shipping label on a box which would have caused the box to be shipped by land rather than air. The next day, July 19, while Amezcuita and Preciado were talking, Supervisor Su walked by on two occasions and observed their conversation. This was during a time, as I have found, when Amezcuita's activities were kept under observation.

The testimony of Chiu makes it clear that he was very suspicious of Preciado's conduct. He believed that Preciado had been instigated by others to mislabel the box, and that it was an intentional act intended to cause the Respondent financial loss. Further, Preciado was discharged only after being given the opportunity to identify the person or persons who caused him to engage in this alleged misconduct. Thus, Chiu testified to his belief that Preciado was not acting on his own, and that he refused to tell the truth about the incident and implicate the other responsible parties.

It is clear that at the time Chiu was attempting to ascertain Preciado's motivation for mislabeling the box, which Chiu deemed to be intentional, he was also involved in the process of effectuating the discharge of Amezcuita, Devoe, and Guerrero for their union activity, as found above; and Preciado was discharged on the same day as the aforementioned employees. There is no evidence that Chiu was concerned with alleged subversion or obstructionist tactics from any source other than the Union, which Chiu admittedly deemed to be a subversive and deceitful organization.

In the absence of any evidence by the Respondent that its suspicions regarding Preciado's motivation for applying the label to the box were unrelated to the Union's organizing campaign or the union activity of the other employees, I conclude from the foregoing circumstances that the record evidence demonstrates that Chiu believed that Preciado was acting in concert with the Union or with the employees who were simultaneously discharged along with Preciado. Further, I credit Preciado's testimony that his placement of the sticker on the box was spontaneous and heedless, but was not an act designed to cause the Respondent any economic injury; and it is reasonable to conclude that the immediate warning by Foreman Delapaz not to let this happen again, and the fact that Preciado was not discharged until some 4 days later, indicates that Preciado's conduct was not considered to be immediate grounds for dismissal. Accordingly, I find that the credible record evidence shows that Preciado was discharged in violation of Section 8(a)(3) of the Act because of his close association with Amezcuita, coupled with the Respondent's mistaken belief that Preciado was collaborating with the Union to cause the Respondent economic injury.

Espinosa was discharged on July 26, 4 days after the other discriminatees herein. He too signed a union membership card, and was known to be a close friend of Preciado, as the two of them would walk to and from work together. Further, Espinosa sometimes worked in the basement, and had occasion to speak with Amezcuita. Chiu's express motivation for discharging Espinosa is revealing. Thus, after listing various alleged work deficiencies, Chiu stated that while Espinosa, a relatively long-time employee who had the position of lead man in his department, was very smart and could be a good worker, he became lazy and did not concentrate on his work, and "always went down to the basement and talked to people there." I have generally not credited Chiu, and there is no testimony from any of Espinosa's supervisors regarding

his alleged work deficiencies. Further, whatever Espinosa's work deficiencies, the record shows that the Respondent had been tolerant of them in the past, and Chiu's testimony indicates that Espinosa's talking with the employees in the basement was a significant factor in the Respondent's decision to terminate him.

Given Espinosa's known close association with Preciado, and his alleged talking with people in the basement, all of whom were unlawfully discharged just 4 days before, I conclude that the record evidence demonstrates that Espinosa was also discharged because of his association with such employees and therefore, because of his suspected activity on behalf of the Union. Accordingly, I conclude that Espinosa was unlawfully discharged in violation of Section 8(a)(3) of the Act.

#### CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has violated Section 8(a)(1) of the Act by engaging in surveillance of employees' union activities, and by coercively discouraging employees from engaging in union activities.

4. The Respondent has violated Section 8(a)(3) and (1) of the Act by discharging employees Maria Amezcuita, James Devoe, Julio Guerrero, and Luis Carlos Preciado on July 22, 1991, and by discharging employee Gustavo Espinosa on July 26, 1991, because of their activities, or suspected activities, on behalf of the Union.

#### THE REMEDY

Having found that the Respondent has violated Section 8(a)(1) and (3) of the Act, I recommend that it be required to cease and desist in any other manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act. Moreover, the Respondent shall be required to post an appropriate notice, attached hereto as "Appendix." (Omitted from publication.)

Having found that the Respondent unlawfully discharged the aforementioned employees, I recommend that it offer them immediate and full reinstatement, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of earnings and benefits they may have suffered by reason of the Respondent's discrimination against them. Backpay is to be computed in accordance with the Board's decision in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>6</sup>

<sup>6</sup>If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

## ORDER

The Respondent, Rainbow Garment Contracting, Inc., Los Angeles, California, its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Engaging in surveillance of employees union activities.

(b) Coercively discouraging employees from engaging in union activity by advising them that the Respondent has confronted the union representatives with a handgun and has punctured the tires of their vehicle.

(c) Discharging employees because of their activities or suspected activities in support of the Union.

(d) In any other manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed to them under Section 7 of the Act.

## 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer to employees Maria Amezquita, James Devoe, Julio Guerrero, Luis Carlos Preciado, and Gustavo Espinosa immediate and full reinstatement to their former positions of employment, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay or benefits suffered by reason of the discrimination against them, in the manner described above in the remedy section.

(b) Preserve and, on request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this recommended Order.

(c) Post at its Los Angeles, California facility copies of the attached notice marked "Appendix."<sup>7</sup> Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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<sup>7</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."